

## CUSTODIAL AGREEMENT

THIS CUSTODIAL AGREEMENT made and entered into this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_, by and among \_\_\_\_\_  
(the "Company"), \_\_\_\_\_ a trust company with  
Bank or Financial Institution  
principal offices in \_\_\_\_\_ (the "Custodian"), and  
City/State  
the Commissioner of Commerce for the State of Minnesota (the "Commissioner").

### WITNESS THAT:

WHEREAS, the Company has applied to the Commissioner for the authority to self-insure its workers compensation obligations;

WHEREAS, Minnesota Statutes, Section 79A.04, subdivision 1 requires a private self-insurer to secure incurred liabilities for payment of compensation and the performance of the obligations of employers imposed under the chapter 176 by depositing security;

WHEREAS, Minnesota Statutes, section 79A.04 subdivisions 3 and 6 permit cash to be deposited as security provided that it is deposited in a financial institution approved by the Commissioner in account assigned to the Commissioner of Finance;

WHEREAS, the Company, the Custodian and the Commissioner desire to enter into an agreement with respect to the deposit of cash by the Company for the above-referenced purposes; and

WHEREAS, the Company has made an initial deposit of \_\_\_\_\_  
dollars (\$) (the "Security") with the Custodian, and

the Custodian hereby acknowledges receipt and deposit thereof, and will deposit and acknowledge receipt of any future deposits, in account number \_\_\_\_\_ (the "Account");

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties hereto agree as follows:

1. CUSTODY. The Custodian agrees to hold the Security until such time as Custodian receives written authorization from the Commissioner permitting the withdrawal by the Company of all or part of the Security held under this Agreement. Upon receipt of such authorization, the Custodian may release to the Company all or part of the Security in accordance with the written authorization of the Commissioner.

2. ASSIGNMENT. The Account is hereby assigned to the Commissioner of Finance by the Company for the payment of compensation and the performance of the obligations of employers imposed under Minnesota Statutes chapter 176. The Company has no right, title or interest in the Security deposited in the Account.

3. RELEASE TO THE COMMISSIONER. In the event of the bankruptcy or insolvency of the Company or the issuance by the Commissioner of a certificate of default against the company pursuant to Minnesota Statutes, section 79A.04, subdivision 9, the Commissioner shall immediately notify the Custodian of such by certified mail at the following address:

\_\_\_\_\_  
(Bank, or Financial Institution)

At the time of notification, the Commissioner shall by written order call the security, and the Custodian shall release the Security to the Commissioner immediately or

at such time as specified by order of the Commissioner.

4. INVESTMENT. Custodian shall invest funds pursuant to Minnesota Statutes 79A.04, Subd. 3a. Unless otherwise directed by the Commissioner, income earned on the Security shall be payable to the Company or used to pay Custodian's compensation as provided under part 7 of this Agreement.

5. INSPECTION OF RECORDS. The Commissioner may, at any time, inspect the records of the Custodian, insofar as they relate to this Agreement, for the purpose of determining compliance with and conformance to the provisions of this Agreement.

6. DUTY AND LIABILITY OF CUSTODIAN. The Custodian may conclusively rely upon and shall be protected in acting upon any statement, certificate, notice, request, order of other document reasonably believed to be genuine and to have been signed or presented by the proper party or parties. The Custodian shall have no duty to verify any such statement, certificate, notice, request, consent, order or other document unless the Custodian has a reasonable question regarding the document's authenticity. The Custodian's sole responsibility shall be to act only as expressly set forth in this Agreement. The Custodian shall be under no obligation to institute or defend any action, suit or proceeding in connection with this Agreement unless first indemnified to its satisfaction. The Custodian may consult counsel in respect of any questions arising under this Agreement and the Custodian shall not be liable for any action taken or omitted in good faith upon advice of such counsel.

7. CUSTODIAN'S COMPENSATION. The Custodian shall be entitled to reasonable compensation for its services performed pursuant to this Agreement. The Company is responsible for paying such compensation. If the Company elects not to pay such compensation or if the Company is delinquent in paying compensation, such Custodian's compensation shall be charged against

the income earned on the security as permitted under paragraph (4). The Custodian shall have no right or setoff against the Security nor may the Custodian otherwise attach the Security for nonpayment of compensation or other monies owed or owing to the Custodian from the Company.

8. TERM OF AGREEMENT. This Agreement will remain in effect until terminated by any party giving written notice sixty (60) days in advance of the termination date.

Notwithstanding the foregoing, this Agreement shall terminate in its entirety when the entire amount of Security has been withdrawn by the Company as authorized by the Commissioner pursuant to paragraph 1, or upon the release of the Security to the Commissioner pursuant to paragraph 3 of this Agreement.

9. BINDING OBLIGATION. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns.

10. ASSIGNMENT, GENERALLY. Except as specifically provided in paragraph 2, no party may assign any of its rights hereunder without the written consent of the other parties, which consent shall not be unreasonable withheld.

Notwithstanding the foregoing, the Commissioner may assign the Security to the self-insurers security funds pursuant to Minnesota Statutes, section 79A.04, subdivision 10 without the written consent of the other parties to this Agreement.

HEADINGS. All paragraph headings of this Agreement are solely for reference and do not constitute binding or effective features of this Agreement.

CONSTRUED UNDER LAWS OF MINNESOTA. The provisions of this agreement and all rights and obligations of the parties hereunder shall be governed and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands  
the day and year first written above.

|                                   |                             |
|-----------------------------------|-----------------------------|
| CUSTODIAN (Financial Institution) | STATE OF _____)             |
| BY: _____                         | COUNTY OF _____)            |
| ITS: _____                        | Acknowledged before me this |
| (Date)                            | _____ day of _____, 20____. |

\_\_\_\_\_  
Notary Public  
My Commission expires\_\_\_\_\_

|                        |                             |
|------------------------|-----------------------------|
| COMPANY (Self-Insurer) | STATE OF _____)             |
| BY: _____              | COUNTY OF _____)            |
| ITS: _____             | Acknowledged before me this |
| (Date)                 | _____ day of _____, 20____. |

\_\_\_\_\_  
Notary Public  
My Commission expires\_\_\_\_\_

|                                  |                             |
|----------------------------------|-----------------------------|
| MINNESOTA DEPARTMENT OF COMMERCE | STATE OF _____)             |
| BY: _____                        | COUNTY OF _____)            |
| ITS: _____                       | Acknowledged before me this |
| (Date)                           | _____ day of _____, 20____. |

\_\_\_\_\_  
Notary Public  
My Commission expires\_\_\_\_\_